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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

MIKAL ADAMS,

Defendant and Appellant.

B202421

(Los Angeles County  
Super. Ct. No. TA088320)

APPEAL from a Judgment of the Superior Court of Los Angeles County. Jerry E. Johnson, Judge. Affirmed.

Diana M. Teran, under appointment by the Court of Appeal for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Xiomara Costello and Stephanie C. Brennan, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted Mikal Adams of one count of second-degree murder (Penal Code, § 187, subd. (a)) with true firearm use findings (Penal Code, § 12022.53, subds. (b), (c), and (d)). Defendant contends substantial evidence does not support his conviction. We affirm.

### **FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

The victim, Fannon Burns, lived at Figueroa Courts, an apartment complex for persons with mental disabilities, including depression, schizophrenia, and mood disorders. On November 21, 2006, at approximately 10:00 a.m., Burn's body was discovered in his apartment. He had died from three gunshots fired at close range. At trial, there was no direct evidence of defendant's guilt; evidence implicating defendant as the shooter consisted of testimony from residents of the complex, forensics, and ballistics evidence.

The coroner testified that Burns died from three nine-millimeter gunshot wounds. Although the coroner did not fix the time of death, the body was in a state of early decomposition when he received it for autopsy; in his estimate, Burns had been dead for at least several hours, but probably a day or more. He was shot from close range, and once shot, he would have died very quickly.

Police found three nine millimeter shell casings at the scene. Firearms analysis determined the shells came from the same weapon. The police believed that the shooter was inside the apartment. In the closet police found a Pasadena City College application in defendant's name, but they did not find any clothes in the apartment that did not belong to Burns. They did not recover any of defendant's fingerprints from the scene.

The apartment complex had three entrances, one of which was from a parking garage. The other two were at street level; one opened into a main lobby area and the other went to a stairwell. Police requested surveillance video from the complex's security cameras from November 16 through November 21, 2006, but only received videos for November 20 and 21.

Doreen Toutant testified she is the Director of Residential Services at Community of Friends, a nonprofit organization that develops housing for persons with special needs.

They have case managers at each of the apartment complexes they manage. Residents at the apartments must have a diagnosed mental illness, and must be homeless under HUD Guidelines. Potential residents who meet these requirements are screened to determine whether they can pay the rent, keep their units clean, and be good neighbors. The organization does not admit anyone who has a drug problem, or those who have boundary problems. They do not want residents admitting people off the street, such as drug dealers, prostitutes, and others.

Every resident of the complex must be on the lease, and permitting someone to live in an apartment is a violation of the lease agreement. However, tenants may have visitors overnight or up to seven to 10 days. At Figueroa Courts, there were two case managers and a supervisor.

Glenn Catchings, the residential service coordinator at Figueroa Courts, testified he has been there since November 2005. He met with Burns three or four times a week. The tenants are allowed to have one guest for a maximum of 14 days out of the calendar year. He met defendant, who introduced himself as “Kevin,” in August 2006, and became aware that defendant was more than a visitor after he learned of run-ins with other residents and noticed that defendant was at the complex often.

He had a conversation with Burns on November 7, 2006, about defendant, who had approached one of the residents in a disrespectful manner. He told Burns that defendant should stop harassing people. Catchings identified defendant in court as Burns’s guest.

Every third Thursday of the month the residents and managers have a meeting. At the meeting on November 16, 2006, Burns was present. Catchings told him he wanted to speak to him about his guest (defendant), and asked him to come pick up his check the next day, but he did not come by. Catchings went to Burns’s apartment on Tuesday November 21 at about 10:00 a.m., and saw that the door was slightly ajar. He opened it and saw Burns lying face down.

The complex keeps a record of visitors with a sign-in log. “Kevin Burns” signed in for Burns’s apartment beginning in May 2006, and signed in a total of 53 times. Catchings has not seen defendant at the complex since Burns’s body was discovered. The building

has security cameras, with a video camera near the entrance, at the rear, and at the side. The security system is on 24 hours a day. However, no security camera would have captured what happened outside Burns's unit because the cameras only capture images from the periphery of the building.

Charleston Esclovon testified he has lived at the Figueroa Courts for the past three years. He suffers from depression, but does not take any medication. He was a good friend of Burns. He saw the defendant with him.

Esclovon saw Burns on a Saturday, around noon, the weekend before the body was discovered. He last saw him the next day when they walked together towards Esclovon's apartment.

Esclovon did not hear any loud noises, or gunshots, coming from Burns's apartment. On Sunday at about 10:00 p.m., between the time he last saw Burns and the discovery of the body, he heard a heavy thump. He had his water running and his TV on, so he did not pay too much attention to it.

Edward Fleming lives at the Figueroa Courts apartments. He suffers from paranoia and schizophrenia. He does not take his medication because it makes him sleep too much, but does not notice any difference with his symptoms without the medication. He helps clean up the complex by collecting trash. He knew Burns, and found him to be very friendly. He knew that defendant, who went by the name Mikala, was a friend of Burns.

He had known the defendant three or four months at the time of the shooting. Defendant called him on the telephone and told him that he had heard Fleming had been telling people defendant smoked crack. Defendant said, "I'm going to beat your ass once I found you've been telling people I've been around here smoking crack." One day defendant approached while Fleming was sitting in his car and said, "I heard you've been telling people that I've been smoking crack." Fleming responded that defendant was mistaken. Defendant took off his hat and shirt and started swinging at Fleming. Fleming pulled out a knife he kept in his car for protection, but defendant jumped back. Defendant said, "I'm going to get my gun," and ran towards the apartment complex. Fleming called the police. Defendant came back out of the complex carrying a backpack. He had his hand

inside as if he were holding something. Fleming was talking to a neighbor, and defendant approached and said, "I'll take you out right here." Fleming told defendant he did not believe he really had a gun; defendant pulled it out and showed it to Fleming. The gun was a black semi-automatic. Fleming said, "Go do what you gotta do, man," and defendant put the gun away.

Defendant had earlier told him that he had a gun. One day, defendant left the clip at Fleming's house, and when he came back to get it, he knew exactly where it was, between the pillows on the sofa. Defendant told Fleming that if Burns were to "put him out," he would shoot him. He could not remember when defendant said this.

Vernitta Washington was not a resident of Figueroa Courts, but had a "play uncle" named Irwin who lived there. She met defendant at the complex, and identified defendant in court. Defendant told her that his name was "Kevin," and that he was the half-brother of Burns. She saw defendant three or four times at the complex. She is a prostitute and defendant has paid for her services.

Defendant told Washington that sometimes he got mad at Burns, and felt like "whopping his ass." She had seen defendant carry a gun; he had it one time when she was at her uncle's apartment. It was black with a clip on it. She first met defendant at Burn's apartment. The last time she saw defendant was in April 2006. Her uncle Irwin was schizophrenic, and she saw some of the same behavior in defendant. Defendant told her he lived someplace other than Figueroa Courts.

Washington admitted that she drank a lot, and that there were things she did not remember. Her nickname is "Crazy Candy." She has several convictions for prostitution, and convictions for arson, marijuana possession, and infliction of corporal injury on a spouse.

Patricia Taylor testified she had lived at the Figueroa Courts apartments for four years. She suffers from depression, and takes medication. She lived next door to Burns and had known him for about a year. She knew defendant as "Miguel," and met him in approximately August 2006. She saw him with Brenda Davis, another resident of the complex, almost every day, and she saw him with Burns almost every day for about two

months. Defendant told her that he always carried a gun so he could shoot police or shoot whoever shot at him, but she never saw his gun. Defendant had told her that he was Burns's brother.

She last saw Burns alive on a Thursday in November, a week before her birthday of November 25. They were having a dinner on the patio and the whole complex was there. Defendant was not at the dinner because nonresidents were not allowed. He came out of Burn's apartment and looked angry. Defendant said "I'm going to kill whoever makes my brother move." Burns had come out of his apartment to get a plate of food from the party, and about five minutes later came back out to get another plate. Both Catchings and another manager, West, were sitting on the patio when defendant walked out and said he would kill anyone that would make his brother move.

Although her apartment had a common wall with Burns's apartment, she did not hear any gunfire. She did not learn he had been killed until the police knocked on her door.

James Aubrey Lyons lived at the Figueroa Courts apartments. He suffers from depression and takes medication, although he is not impaired from the medication. He had seen defendant at Burns's apartment; defendant lived at the apartment for at least two months. Defendant mentioned to him that he had a gun. When they found the body, it was a Friday and Lyons had just gotten back from the doctor. He believed he last saw Burns Wednesday or Thursday at 10:00 a.m.

Brenda Davis testified that she lived at the Figueroa Courts for four years. She has schizophrenia and is on medication. Burns held cooking classes at his apartment, and she went to them on occasion. Defendant was Burns's visitor for about three months. She had seen him with a gun, which she identified as a semi-automatic. She knew defendant by the name of "Kevin."

On December 29, 2006, Officer Jose Lopez responded to 4127 Palmwood Avenue, Apartment 7, in Los Angeles regarding a shooting. He met with Margie Ivory, who told him that she had arrived in the rear alley behind her apartment building at approximately 7:38 p.m. and opened the gate to park her car. A Black man asked if he could walk through her carport to the building, and she ignored him. She saw him pacing from side to

side, and saw him conversing with a Black man. He took out a semi-automatic handgun and shot at the first person. She heard three shots and left the car to call the police. They recovered a nine-millimeter casing from near the car. The location of the shooting was about 60 yards away from the gas station at Palmwood and Martin Luther King.

Edmund Moses Bell lives at 4034 Palmwood Drive, near Martin Luther King Blvd. In December 2006, he met defendant on the bus. He employed defendant to help him trim a tree at church, and let defendant live in his garage for a while. On December 28, 2006, the police came to speak to him about defendant. He showed police where defendant stayed in the garage. He never saw defendant with a gun.

Diana Paul, a criminalist with the Los Angeles Police Department, testified that a semi-automatic weapon is self-loading. She compared the three shell casings recovered from Burns's apartment with the shell casing recovered on December 29, 2006. They were fired from the same weapon.

The parties stipulated that defendant was in Los Angeles County Sheriff's custody on December 29, 2006, and that defendant did not appear on the security footage from the complex taken November 20 and 21, 2006.

The jury convicted defendant of murder, and found the firearm allegations to be true. The court sentenced defendant to 40 years to life, consisting of 15 years-to-life on the murder conviction, plus a consecutive 25 years-to-life on the firearm enhancement under Penal Code section 15022.53, subdivision (d). The court stayed sentence on the other two firearm enhancements.

## **DISCUSSION**

Defendant contends the evidence is insufficient to sustain his conviction because the prosecution's case rested on circumstantial evidence of motive, ambiguous statements he made about Burns, and ballistics evidence connecting shell casings found at the scene with shell casings found a block from defendant's house.

We review the record in the light most favorable to the judgment to determine whether it contains substantial evidence – evidence that is reasonable, credible, and of solid

value – from which a reasonable trier of fact could have found defendant guilty beyond a reasonable doubt. (*People v. Stanley* (1995) 10 Cal.4th 764, 792.) We apply the same standard to a verdict based upon circumstantial evidence. (*Ibid.*) Circumstantial evidence may be sufficient to connect the defendant to a crime and prove his guilt beyond a reasonable doubt. (*Id.* at p. 793.) A judgment is not subject to reversal on appeal “simply because the prosecution relied heavily on circumstantial evidence and because conflicting inferences on matters bearing on guilt could be drawn at trial.” (*People v. Millwee* (1998) 18 Cal.4th 96, 132.) “Although it is the duty of the jury to acquit a defendant if it finds that circumstantial evidence is susceptible of two interpretations, one of which suggests guilt and the other innocence [citations], it is the jury, not the appellate court which must be convinced of the defendant’s guilt beyond a reasonable doubt.” (*People v. Bean* (1988) 46 Cal.3d 919, 932-933.)

Defendant relies heavily on *People v. Blakeslee* (1969) 2 Cal.App.3d 831 (*Blakeslee*), in which the court overturned a murder conviction based upon circumstantial evidence. In *Blakeslee*, the defendant and her brother resided with their mother in an apartment complex. At 7:20 p.m., the defendant’s brother left the apartment after an argument with the mother, and was accompanied by the defendant. The defendant spent some time with her brother listening to tapes by his car in the carport. Her brother left. (*Id.* at pp. 833-834.) They had left their mother in the apartment reading; about 10 minutes later, a returning neighbor heard loud sounds. (*Id.* at p. 834.) The defendant encountered a neighbor around 7:35 p.m. carrying newspapers out of her mother’s apartment, and they spoke briefly in the courtyard. (*Ibid.*) Shortly thereafter, defendant went to a neighbor’s apartment because her mother had been shot. (*Ibid.*) At about 8:00 p.m. defendant’s brother returned. (*Id.* at p. 835.) Defendant claimed that after dumping the newspapers in the trash, she went for an 11-mile drive. (*Id.* at p. 835.) The defendant’s brother owned a .22 caliber rifle which was missing after the shooting. Defendant knew how to use the weapon. The rifle had to be reloaded each time after firing, and because the bullets shattered on impact, they could not be used to identify the gun from which they had been fired. The coroner testified the victim was shot with a .22 caliber weapon. (*Id.* at p. 835.)



At trial, the defendant recanted her story about the 11-mile drive, claiming she concocted the story to protect her brother. (*Id.* at p. 836.)

The court found insufficient evidence to convict, concluding, “No one witnessed the shooting, no one placed defendant in the apartment at the time of the shooting, no one saw defendant with a weapon, and no one identified defendant with any particular weapon.” (*Id.* at p. 838.) The court noted that one factor relevant to the question of whether the evidence was sufficient to inspire confidence in defendant’s guilt was “the absence of evidence we would normally expect to find in a murder prosecution based upon circumstantial evidence. The absence of evidence . . . may have as great an impact on the substantiality of a case as any which is produced, for the absence of evidence which would normally be forthcoming can undermine the solidity of the proof relied on to support a finding of guilt.” (*Id.* at p. 839.) In particular, the court noted: “At bench, the missing evidence is not peripheral but is central to the charge of murder. It consists of (1) evidence of a murder weapon, which we do not have; (2) evidence linking the bullets which caused the victim's death to a particular weapon, which we do not have; (3) in the absence of the first two items, evidence of the type or caliber of weapon used for the murder, which we do not have; (4) evidence to establish a connection between a murder weapon and the defendant, either tangible evidence such as fingerprints, palm prints, or powder burns, or testimonial evidence linking the defendant in some manner to a weapon, which evidence we do not have.” (*Id.* at pp. 839-840.)

The court further noted that, “Merely to illustrate the insubstantiality of the case against [defendant] and not to suggest any implication of wrongdoing or suspicion of guilt against another, on the evidence before the court we could draw an almost equally plausible series of inferences to build a case of murder against defendant's brother Michael. He had been in the house that night; he had quarreled with his mother, who had threatened to take away his car; presumably his rifle and his ammunition were used to kill his mother; when [defendant] left the apartment he had the opportunity to return to it, get his rifle, kill his mother, then leave, dispose of the rifle, and return home by 8 p.m. He had spent a year in the custody of the California Youth Authority. When [defendant] discovered the body

of her mother she lied to protect her brother, either because she knew he had committed the crime or because she believed he had committed the crime. On the evidence in this record we could thus bring together opportunity, motive, propensity, and even work in [defendant's] falsehoods, in a plausible reconstruction of the crime with [defendant's brother] as protagonist instead of [defendant]." (*Blakeslee, supra*, 2 Cal.App.3d at p. 840.)

Relying heavily on *Blakeslee*, defendant contends that (1) witnesses failed to place him at the scene of the crime; (2) the testimony regarding threats he made did not establish motive because it was irrelevant, unreliable, remote, and ambiguous; (3) the evidence concerning the fact he carried a gun was of minimal significance because the weapon was never recovered; (4) his statements made to Prince were not admissions of guilt; and (5) the absence of evidence "which would normally be forthcoming" was not presented: (a) surveillance tapes; (b) evidence he had signed in or out of the complex at the time of the shooting; (c) evidence he was at the complex during the relevant time period; (d) the murder weapon; (e) fingerprints; and (f) reports of gunshots.

Defendant's arguments, and his reliance on *Blakeslee*, go to the weight of the evidence, rather than its sufficiency, and as such, would have us invade the province of the trier of fact. (See *People v. Rodriguez* (1999) 20 Cal.4th 1, 11-12.) Relying on more modern authority, we will not focus on what is lacking in the prosecution's case or the strength of the inferences to be drawn from the evidence. "“If the circumstances reasonably justify the trier of fact's findings, the opinion of the reviewing court that the circumstances might also reasonably be reconciled with a contrary finding does not warrant a reversal of the judgment.”” (*People v. Stanley, supra*, 10 Cal.4th at p. 793.)

Here, contrary to defendant's assertions, there is sufficient circumstantial evidence from which the jury could infer motive, opportunity, and means, and find defendant guilty. Defendant was unlawfully on the premises of the Figueroa Courts apartments because he had overstayed his welcome; the manager of Figueroa Courts had spoken to Burns about defendant's presence, from which the jury could infer Burns told the defendant he had to leave, or else Burns would lose his lease (an inference supported by the defendant's statement that he would "kill" anyone who made his "brother" move); the defendant had a

firearm that he had previously used against one tenant and many of the tenants were aware defendant possessed a weapon; and defendant disappeared from the complex following the shooting.

**DISPOSITION**

The judgment of the superior court is affirmed.

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ZELON, J.

We concur:

PERLUSS, P. J.

WOODS, J.